IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

RP.No. 360 of 2007(A)

AGAINST THE JUDGEMENT/ORDER IN WPC.35281/2005 Dated 07/03/2007

.....

SUO MOTU

BY ADV. SUO MOTU

RESPONDENTS: PETITIONERS & RESPONDENTS

---

1. NELLIKUNNAN ABDUL AZEEZ
S/O.NELLIKUNNAN MUHAMMED,
DOWN HILL, MALAPPURAM

2. NELLIKUNNAN ASHRAF
S/O.NELLIKUNNAN MUHAMMED
DOWN HILL, MALAPPURAM

3. V.K.C.CREDIT AND FOREX SERVICES (P) LTD
NO.39/1728, 2ND FLOOR
THARAKAN HOUSE, PALLIMUKKU, ERNAKULAM
REPRESENTED BY ITS POWER OF ATTORYNEY HOLDER
MR.K.EDWIN, AGED 22 YEARS, RESIDING AT
11/48, PATTALAM ROAD, COCHIN-1

4. STATE OF KERALA,
REPREENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM

BY ADV. SRI.K.SRIHARI RAO
SMT.N.SHOBHA
SRI.B.R.MURALEEDHARAN
SRI.P.N.ANOOP
SRI.P.SATHISAN
GOVERNMENT PLEADER SRI.GIKKU JACOB

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 28/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

R.P.No.360 of 2007
and W.P.C.No.35281 of 2005

Dated this the 28th day of March 2007

O R D E R & JUDGMENT

This court had disposed of W.P.C.No.35281 of 2005 on 07/03/2007. Prosecution against the petitioners under Section 138 of the Negotiable Instruments Act was quashed by this court, as per the said order. It was so quashed, placing reliance on Ext.P1 produced by the petitioners. The original of Ext.P1 was also brought to the notice of the court. That order was passed on 07/03/2007. Later, this court had occasion to consider the very same document in another application filed by the same petitioners on 09/03/2007 while disposing of W.P.C.No.8514 of 2005. This court, then realised that a crucial fact in Ext.P1 had not been brought to the notice of this court.

2. I shall advert to that crucial fact. It was stated in Ext.P1 that the petitioners had retired from the Board of Directors of the Company with effect from 20/11/1995 and consequently they were not members of the Board of Directors on the date of the cheque. But the fact that the said intimation

of retirement of the petitioners as Directors was given to the Registrar of Companies only on 15/03/2004 was not brought to my notice by the counsel for either contestant nor was this court alert to perceive that vital fact.

3. This court, therefore, felt that it would be improper to permit the petitioners to enjoy any undeserved benefit on the basis of an obvious error committed by the court. Therefore, while disposing of W.P.C.No.8514 of 2005, it was directed that suo motu review petition be registered. It is accordingly that this review petition has come up for hearing.

4. Notice has been given to the learned counsel for the petitioners and the respondents. No further contentions are raised in support of Ext.P1. I am satisfied, in these circumstances, that the review petition deserves to be allowed. This review petition is allowed. The order in W.P.C.No.35281 of 2005 is recalled.

5. Now coming to the question of disposal afresh of W.P.C.No.35281 of 2005, I am satisfied that the petitioners cannot claim any advantage on the basis of Ext.P1 relied on by

them which has been filed before the Registrar of Companies only on 15/03/2004 admittedly. The cheque relates to a prior date. I am satisfied that the petitioners must be relegated to face the trial and raise the contention regarding the precise date on which they had ceased to be the Directors of the Company by adducing appropriate evidence in the course of the trial. No other contention is raised.

6. W.P.C.No.35281 of 2005 is, in these circumstances, dismissed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006